

Human Rights Monitor

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A Tamil Information Centre Publication

THE CURRENT SITUATION OF TAMILS IN SRI LANKA

INTRODUCTION

Despite appeals made by several NGOs, Western governments continue to pursue a policy the main objective of which is the repatriation of Tamils before the war in Sri Lanka is brought to an end. Repatriation of Tamils from India also continues. UNHCR maintains that Tamils could be returned to the South and hill country where they would be relatively safe. However, independent reports from Sri Lanka paint a different picture.

Governments, particularly western governments say that there are "improvements" in the human rights situation. Perhaps, this impression may be largely due to the fact that arbitrary arrests, disappearances, extra-judicial executions, torture in custody and reprisal killings by

Arbitrary arrest and detention

Amnesty International in its recent report says that since the beginning of 1993 "thousands of Tamil people, including prisoners of conscience, were arbitrarily arrested and detained, solely on account of their ethnicity, especially in Colombo. Some were arrested by plain clothed officers in the middle of the night and driven off, blindfolded, in unmarked vehicles. Many were held in unacknowledged detention for days, at least, before being released, sometimes on payment of a bribe. Some were brought before magistrates and released on bail or kept in custody even though police had not specified their connection with any known offence."

The government of Sri Lanka has, agreed that there were 15,000 arrests in Colombo under Emergency legislation between 1 June and 31 December 1993.

Reports on arrests indicate that the government has not kept its promise to introduce safeguards agreed with the Tamil

the security forces have become far less in magnitude compared to previous years.

Many national and international human rights organisations say that the impression of "improvement" is both superficial and misleading and that the structures which permit human rights violations are still intact.

Rule by Emergency

The government and its officials continue to enjoy, under Emergency regulations, wide powers of arrest, prolonged detention, powers of preventive custody as well as to place restrictions on the rights of assembly, association and expression.

There is growing concern whether the current situation justifies the maintenance of the Emergency islandwide. The Prevention of Terrorism Act, which permits prolonged detention and the use of confessions howsoever obtained, in evidence, is still in place. This has meant that the normal rule of law and of due process have been set aside in the name of national security.

political parties in June 1993. The arrests continue to be arbitrary and without any foundation and as agreed they were not brought to the attention of their relatives, and according to Amnesty, in many cases families who have not been notified of the arrest desperately search for their missing relatives, fearing they have "disappeared".

Amnesty further says that "hundreds of political prisoners remain in detention for over two years without trial. Torture and ill-treatment in custody continued and over 25 "disappearances" were reported which have not yet been clarified. Extrajudicial killings were reported in both the north-east and the south, though at lower level than in previous years". It also says "the Liberation Tigers of Tamil Eelam failed to account for numerous prisoners in their custody, some of whom they reportedly executed".

Arbitrary arrest affects in particular every Tamil living in Colombo and the South. Lodges and residences of Tamils in the city are searched frequently. Registration of residents from other districts with the police is being strictly checked. Two Tamils and a Muslim person who were letting out accommodation to Tamils from North without registration with the police in contravention of Emergency regulations have been sentenced to six months rigorous imprisonment, suspended for five years by

the Negombo magistrate.

Roundups and arrests increase with LTTE activities. Reports suggest that surveillance of Tamils, particularly young Tamils was intensified in the aftermath of the LTTE attacks in Kilali and Pooneryn in the North. Police raided houses and lodges where Tamils were living. Each time the police make such raids they claim that they arrested many "Tigers", adding to the general sense of panic. But, independent sources have always refuted such claims.

Four bombs went off in and around hotels in Colombo on Friday night on 10 April 1994 and a fifth exploded on Saturday morning at Sri Lanka's zoo at Dehiwala, just outside the city. Hundreds of Tamil residents in the capital Colombo were rounded up by police. Police increased check points and raided homes and lodges in many parts of Colombo. Police sources informed that 25 people were detained for questioning in Wellawatte, where one of the bombs damaged a hotel. But TIC sources say that over 500 Tamils were detained for questioning in predominantly Tamil areas in the city of Colombo and it was possible that there were more arrests in other areas.

The reports also suggest that the army and armed Tamil groups who operate with the army as their "agents" continue to abduct people and hold them in secret places of

detention, torture and thereafter dump them on the roadside or transfer them to police custody. There are a large number of Tamils held in police cells without the knowledge of relatives, friends or monitoring agencies such as ICRC and the Human Rights Task Force (HRTF). These detainees are regularly interrogated by members of the Tamil armed groups operating with the security forces. Tamil Information Centre has received several reports of abduction and torture by the Eelam Peoples Democratic Party (EPDP) an armed Tamil group working with the government. Amnesty in its report says that the People's Liberation Organisation of Tamil Eelam (PLOTE) was also reported to have participated in these arrests. Reports also suggest that the practice of unidentified armed groups in unmarked vehicles abducting Tamil youth still continues. Such abductions have taken place at Wellawatte where there is a concentration of Tamils.

Concerns are high over the quota system in operation for Tamil arrests in the Colombo city. This follows the article published in the "Sunday Times" in September 1993 that the police in the city operate a quota system under which each police station is required to arrest a specified number of Tamils, and that the police are targeting wealthy Tamil youths at leading schools and prospering Tamil businesses. Financial extortion by police to secure a detainee's release

continues. Police have also accused a Tamil gang of extorting money from people arriving from the north. The government clearly has no control over police corruption.

Arrests in the North-East

Complaints of arbitrary arrests, search and destroy missions by the security forces continue in the north-east. Though there has been some reduction in the number of people detained the arrests and roundups continue and people are living in fear. Security forces also use armed Tamil groups in their security operations. There are reports of extrajudicial killings of relatives of the LTTE. Amnesty International confirms in its report that people were arrested for the sole reason that they were relatives of an alleged LTTE member.

Amnesty also confirms reports that security forces summarily executed some alleged LTTE members following capture, even though they offered no resistance and could have been arrested.

Impunity

The government continues to show reluctance to punish security forces violating human rights. It has even shown reluctance to investigate allegations against the security forces. Though the government has shown

Kilali.

Examples:

Police officers found guilty of violations by the Supreme Court:

According to the Sri Lankan human rights organisation INFORM, from 1 January 1980 to 31 February 1992, 87 police officers were found guilty of fundamental rights violations by the courts; of these 52 judgements were delivered in 1992 and 1993.

Among serving police officers who have been found guilty, are Deputy Inspector General A S Seneviratne, Superintendents A E Sharvanandan, Edison Gunatileke and Lalith Gunasekera and Assistant Superintendent Chandra Prasad. Eleven chief inspectors and inspectors found guilty have been subsequently promoted.

Superintendent Nimal Chandrasiri and Chief Inspector O Wimaladasa have been each found guilty in four separate cases. Assistant Superintendent K Udayapala, inspectors N A Jayashantha and B G Devasurendra, sub-inspector J M Punchibandara and sergeant R W M Rajapakse have been each found guilty in three separate cases.

Awards made against all these police officers have been paid by the state.

willingness to take steps to improve the human rights situation in the country, immunity remains as the major obstacle to improvement of human rights. Amnesty International says "there were no known prosecutions for perpetrating 'disappearances', and the few trials started for other human rights violations - including extrajudicial killings - failed to reach any conclusion by the end of 1993".

There have been several attacks on passengers crossing the Jaffna lagoon through Kilali. The Jaffna Kilali ferry is the only passage open for the people within the peninsula to travel to the mainland. The government declared kilali a prohibited zone in October 1992. Over 250 Tamils have been killed in airforce and navy attacks in 1993. In January 1993 in one attack alone 50 people were massacred by the sailors who boarded boats and deliberately killed civilian passengers who offered no resistance. Eyewitness reports also suggest that sailors used knives to cut fingers and ears to remove jewellery of the dead passengers. No action has been taken against the perpetrators. Reports say that after the massacre, Sri Lankan Presidential Advisor Bradman Weerakoon who was in Geneva attending an International Conference on the Protection of War Victims eloquently insisted that governments must take responsibility for the actions of their agents and deny them immunity. He said nothing however about

DIG A S Seneviratna was one of those recently honoured by the President with the "Puma Bhumi" award, described as a "coveted police honour".

INFORM says that it has been difficult to trace any instance where the government has punished a police officer found guilty by the courts of human rights violations.

Government Promises and actions

Western governments say the human rights situation in Sri Lanka has significantly improved. This is incorrect. Amnesty International made several recommendations for human rights safeguards to the government. The government accepted 30 recommendations and Amnesty continually pressed the government to implement them. In February 1994, Amnesty published an assessment of the extent to which recommendations have been implemented. It finds that many essential protective and investigative measures remained to be fully implemented.

On 3 January 1994 the government acceded to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This was in the context of numerous revelations that persons taken into custody by security forces had been routinely subjected to torture. Although this appears to be a

positive step forward in checking the increasing human rights abuses by the security forces human rights agencies say the accession was to placate the UN Commission on Human Rights which held its 50th session in February/March 1994. The government agreed to invite the UN Special Rapporteurs on Summary and Arbitrary Executions to visit Sri Lanka. The invitation is still outstanding.

Amnesty International alleges in its report that several initiatives for the protection of human rights previously announced by the government remain to be implemented. For instance, the proposed amendments to the Constitution affecting fundamental rights, which were published by the government in December 1990 and which were first announced to the UN Commission on Human Rights in 1991, have not been put before Parliament. Nor has there been any progress in establishing a Human Rights Commission, which the government promised the UN Commission in the same year.

In June 1993, Emergency Regulations (ER) were revised. They now prohibit secret detention and, for the first time, require publication of all authorised places of detention. Amnesty International alleges further that the alterations to arrest and detention procedures, however, still fail to provide adequate safeguards for detainees.

Amnesty says it will still enable the authorities to hold people in preventive detention indefinitely and permit long periods of detention in police or military custody in the north-east.

Amnesty further adds that additional safeguards provided, such as the issue of certificates of arrest by the arresting officer and prompt notification of detentions to the Human Rights Task Force (HRTF) were repeatedly flouted. Despite the government's declared intention to remove any Emergency regulation which has no bearing on public security concerns, it promulgated in December 1993 new regulations requiring the registration of non-governmental organisations (NGOs) and monitoring of their income and expenditure. The government announced that these matters were dealt with under Emergency law "as the enactment of legislation is going to take time". No justification was given for these regulations in terms of public security concerns.

Revision of Emergency Regulations

Due to constant pressure from Human Rights organisations the government agreed to cooperate with the study of the Emergency Regulations in force by the Centre for the Study of Human Rights of the Colombo University and the Nadesan Centre. A report was submitted to the

government in January 1993.

The government agreed on some of the recommendations in the report and made amendments to certain regulations. These amendments and the number of regulations still in existence according to the Civil Rights Movement of Sri Lanka (CRM), are just "dead letters". According to CRM, a large number of extremely important safeguards against abuse of arrest/detention powers, torture and ill-treatment in custody, remain absent in the report. According to INFORM, "the major part of the recommendations of the comprehensive review of the Emergency regulations made by the Centre for the Study of Human Rights of the University of Colombo have, regrettably, not been implemented. Such improvements as have been made bear very much the character of small and grudging concessions - often not even a "half way house" towards meeting the needs pointed to time and time again by the clear and specific criticisms of non-governmental groups both nationally and internationally over the years".

It should be noted that the government representative eloquently and impressively stated at the August 1993 sessions of the UN Sub-Commission in Geneva that the government was in favour of an examination of all the emergency regulations "with a view to revoking those

which are unnecessary and to identify those that are not strictly relevant in the public security context which could be enacted as laws through the normal legislative process".

This has not yet been done. But instead, in December 1993, there was re-enactment of the regulation on sedition and incitement with the inclusion of two new categories of offences namely, the distribution of handbills and leaflets and the exhibition of posters and the promulgation of a new regulation for the registration and monitoring of the NGOs. According to INFORM "the government intends on using the state of Emergency to stifle opposition and dissent as well as to bring under its control independent organisations".

The role and activities of the HRTF

In February 1993 the terms of reference of the HRTF were scrutinised by the Supreme Court. The Supreme Court has enquired as to why the HRTF was not making use of its powers to give directions to the authorities to release detainees, wherever they found that the detention was improper or illegal. The Court has pointed out that this was a salutary, expedient, effective, and inexpensive method for executive review of the detention of persons, and stated that petitioning the Supreme Court on a fundamental rights petition should be

resorted to only if the former procedure failed.

Human rights lawyers and the Legal Aid Centre of the Bar Association are dissatisfied with the manner in which the HRTF is implementing the Supreme Court directives. INFORM reports that on several instances where the HRTF has been directed to make inquiries and report back, the HRTF has merely produced the police report and the admission of the suspect without making an independent inquiry. The excuse given by HRTF was lack of time to investigate all cases.

The HRTF now has a central office in Colombo and regional offices in Matara, Batticaloa, Kandy, Vavuniya, Anuradhapura, Trincomalee, Badulla, Kalmunai, Amparai and a sub office at Kathankudy for the Muslims who find access to the Batticaloa office sometimes difficult.

Human rights Organisations say that HRTF has still not been able to project itself as an independent organisation with the capability of providing protection to detainees. They say that its impact is still minimal, particularly in areas of the Eastern province where there is a heavy military presence and atrocities continue on a large scale. They say that HRTF suffers from inadequate resources, untrained personnel and lack of

respect from the security forces except where its Chairman, Justice Soza, personally intervenes.

Human rights organisations also say that there has been no improvement in the procedures for reporting detentions to the HRTF. There are serious difficulties faced in the notification of arrests to the HRTF. HRTF should be informed by the arresting agency immediately of any arrest with or without a warrant. The reality is that in the majority of cases it is the relatives and friends of the persons taken and not the police/military who inform the HRTF.

Reports also indicate that amendments made to the Emergency regulation in June 1993 provide for notifying the existence and the address of such places of detention to the Magistrate within whose jurisdiction such places are located. It also specifies that the Secretary to the Ministry of Defence should publish in the gazette a list with the addresses of all places authorised by him as places of detention.

However, the maintenance of a central register of detainees is still hampered by the fact that undisclosed places of detention still remain possible within the law. Moreover, the HRTF keeps no track of temporary detention centres on the ground that it is difficult to implement.

INFORM says that interviews with detainees reveal that they are dissatisfied with the work of the HRTF in ensuring their welfare. Specific criticism has been voiced with regard to the reluctance of the HRTF to intervene in instances of conflict and violence between detainees, where the detention authorities themselves were not interested.

Regional officers of the HRTF in Auradhapura and Badulla have received 200 and 50 complaints respectively of missing persons, but HRTF has been unable to trace even a single person.

Recent events have drawn attention to the plight of detainees whose releases have been ordered by the Supreme Court, but who are still being kept in detention. Given the mandate, the HRTF, should have intervened but it has not taken any action.

Refugees and Displaced people

The government of Switzerland has planned to repatriate Tamils who have sought asylum after 1990. On 2 March 1994, Vickramaraja Tissaiveerasingam, a 36 Year old Tamil asylum seeker, living in Ensobing in Sweden set himself on fire and suffered serious burn injuries when he was informed by the Swedish Immigration Ministry that his permission to stay in Sweden would end on 14 March and that he would thereafter be

kept in custody pending deportation to Sri Lanka. The Swedish government continues to maintain that conditions in south Sri Lanka are conducive for returns of Tamils. Plans are in progress to repatriate Tamils whose applications have been refused in stages as in the case of the Swiss programme.

The US Committee for Refugees (USCR) visited Sri Lanka and India on a fact finding mission in September 1993 and has published a Report entitled "People Want Peace: Repatriation and Reintegration in War-Torn Sri Lanka". USCR states that they have encountered evidence that the human rights situation has improved since 1991, especially in early 1993. "Disappearances" have been reduced significantly compared to 1992.

It is possible to argue that there has been a quantitative improvement in "disappearances" and "detention", but this should not be allowed to be interpreted as an improvement in the overall human rights situation. The Sri Lankan Police has now degenerated into a fighting arm of the ruling UNP, with harassment, incarceration, threats and even disappearance of opposition members. Political observers say that President Wijetunge's partisan interference in the judicial process has jeopardised the credibility of the entire system of law in the country. Recently the President used his

prerogative of pardon in the case of two businessmen contributing funds to the UNP, convicted of attempted homicide and who refused on five occasions to appear before court. Further, President Wijetunge continues to claim that there is no ethnic problem in Sri Lanka but only a terrorist problem and allows the war to continue. This inevitably leads to gross violation of human rights and Tamils continue as subjects of persecution.

According to G G Ponnambalam (Jr.), General Secretary, All Ceylon Tamil Congress, an argument has been put forward in recent times that there cannot be an ethnic conflict because "Tamils live freely among Sinhalese and the Muslims quite amicably and in harmony". This he says is the very precise argument. "There are hardly any Sri Lankan Tamils living outside the North and East today, except in and around Colombo". Violence in 1977, 1981 and 1983 saw many Tamils permanently flee the south and that was not due to the existence of the LTTE whom the government claims to fight. Mr Ponnambalam argues that "Tamils are living in and around Colombo, because Colombo is the island's capital and some have to stay here to transact business". The displacement of Tamils and movement to Colombo also was the result of continuing war in the North and military campaigns in

the East. Colombo was the only passage for the refugee flight. The passage to India has ceased and refugees from India are being removed to Sri Lanka.

At the end of December 1993 over 600,000 remained as internally displaced. Over 255,000 still live in Welfare Centres. The conditions in these government-run camps are dismal. The USCR report says that "security has been another concern at the welfare centres. There have been instances of arrests, disappearances, forced labour, interrogation of camp residents, and attacks by various parties". The report makes reference to a statement by the head of a Sri Lankan women's non-governmental organisation that "The people most affected by this conflict have been the women - morally, physically, financially. Some lost not only their husbands, but also their grown sons. Many women are traumatised, they don't know for sure if their husband is dead or alive; some have been in and out of camps since 1985".

The USCR reports that only a minority of those currently displaced are likely to be able to resettle as long as the conflict in Sri Lanka continues. This would indicate clearly that repatriation of Tamils at this point in time would not enable them to return to their own homes thus making resettlement difficult.

USCR says that "government promotes the resettlement programme as desirable for the welfare of the displaced, contributing to national stability, and economically necessary because it reduces the number of displaced persons dependent on government". The report also argues that "there is concern that the government may have other, more political, reasons for promoting resettlement". USCR says that "the more families that resettle, the more the government can assert that the situation in Sri Lanka is "normalising", a concept the government is promoting both at the international level and, perhaps more importantly, to the Sri Lankan electorate". The report also says that some observers claim that even the military wants to push resettlement for its own tactical rationale.

In an effort to show the world that the situation in Sri Lanka has improved the government even went to the extent of closing down some of the Welfare Centres for displaced people in Colombo using the strength of the security forces. The USCR confirms that on June 30 1993, buses escorted by members of the security forces arrived at the camp at 3.00 am. and forcibly removed people, sometimes with the use of physical force, who do not want to return to their villages in the military occupied areas. The closure of Vivekananda camp was followed by the closure of Mannika Pillayar

Temple camp. USCR also confirms reports received by the Tamil Information Centre that inmates of these camp who were taken to Batticalloa had made their way back to Colombo.

USCR in its report has warned UNHCR to keep clearly in mind its own assessment that conditions are not yet suitable for repatriation, and avoid any actions that would appear to encourage return. USCR says that the UN refugee agency must also remain sensitive to expressions of concern by many observers that India is pressuring refugees to repatriate.

Disappearance

Batticalloa MP Joseph Pararajasingham has issued a report regarding disappearances in Sithandy. Dharmalingam Rajeswaran, Kathirkamathamby Karunakar, Periyar Sivalingham, Konesapillai Sathiyarajah and Sithiravel Sivakumar were arrested by the Special Task Force at Sithandy in the Batticalloa District on 26 December 1993. These five persons have "disappeared".

Detention

CASE 1: Kanagasabai Selvarajah, Sivakumaran, Paskaran, Thiyagalingam, Partheepan and Gopinathan, who came from Jaffna to repair the temple chariot of the Pathrakali Amman temple in Myura Place in Colombo were arrested in the temple premises on 27.6.93. The Attorney General later informed that his department would not be filing a case against them. Thereafter the Defence Ministry has illegally ordered them to be detained in rehabilitation centres for 2-4 months. In the case filed by these persons state counsel told the Court of

Appeal on 21.3.94 that they would be released on 20 May. The case was postponed to 4 May. On this date the Court of Appeal will decide whether the case should be referred to the Supreme Court for breach of fundamental rights.

Case 2: Miss Seenithamby Selvarani was convicted by the Colombo High Court on 4 January for not providing information to the police regarding the assassination of Navy Commander Clancy Fernando. The Judge imposed a suspended sentence and a fine of Rs. 8500. The fine was paid on the same day. But Ms Selvarani was not released. She continues to be held illegally in prison and a further application has been made to court for her release.

Case 3: Mahalingam Thirukumaran (age 18) of Inuvil in Jaffna was abducted by unknown persons and later released after he became ill. He came to Colombo for medical treatment on 13.6.93 and was arrested at the Fort railway station. He was released by Court on 25.6.93. He was once again arrested on 3.7.93 by the CID officials and is held at the Magazine prison. His aunt has filed application to the Court of Appeal for his release.

Torture and Death in Custody

Case 1: Ethirmanasingam David (age 18) of Vellaveli in Batticalloa District was arrested on 25.12.93 by the Special Task Force and died while in custody.

Case 2: Thevarathi Ravichandran (age 25) an Attorney of the Supreme Court, was arrested on 4.5.93 at Valaichenai in Batticalloa District along with her husband and five month-old daughter. They were held for nine days at the CID headquarters in Colombo and then transferred to the Borella police station. Thevarathi and her daughter were transferred to Welikada prison on 28.9.93. Her husband is at Magazine prison. No reason has been given by the authorities for Thevarathi's arrest and she has not been brought before court. She had been tortured in custody. She was repeatedly beaten with batons on hands and legs. After the beatings she was bleeding and has been

physically and psychologically affected. Application has been made for breach of fundamental rights to the Supreme Court.

Rape in Custody

Following a letter by Tamil detainees in the Batticalloa prison to the Supreme Court that they were being tortured, the Legal Aid Centre of the Bar Association of Sri Lanka sent two Attorneys-at-Law to Batticalloa for investigation, on the direction of the Supreme Court. Attorney Ajith Ratnayake and Nimal Happpu Arachige interviewed 36 of the 91 prisoners. Many complained of torture. They have been forced to sign statements in Sinhala language which they do not understand. These statements are now being used as confessions. A young Tamil woman from Kallar had been raped in custody.

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